



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2019-0240; FRL-9998-84-Region 9]

Extreme Area Submission Requirements, Coachella Valley Nonattainment Area;

California Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) recently granted a request by the State of California to voluntarily reclassify the Coachella Valley nonattainment area from “Severe-15” to “Extreme” for the 1997 8-hour ozone national ambient air quality standards (NAAQS) under section 182(b)(3) of the Clean Air Act (CAA). In this action, the EPA is proposing a schedule for the State to submit an Extreme ozone nonattainment area plan and revised title V and new source review (NSR) rules. The EPA is proposing deadlines for submittal of those state implementation plan (SIP) revisions and for implementation of the related control requirements. Under the EPA’s proposed schedule, California would be required to submit these elements no later than July 10, 2020 (12 months from the effective date of the area’s reclassification). We are also clarifying some language related to tribal areas that was included in our reclassification rule.

DATES: Any comments must arrive by **[Insert date 30 days after the date of publication in the *Federal Register*]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2019-0240

at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Tom Kelly, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3856 or by email at kelly.thomas@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. Background

This action concerns SIP revisions for the Coachella Valley portion of Riverside County,

California (“Coachella Valley”), upon the area’s reclassification to Extreme nonattainment for the 1997 ozone NAAQS. The Coachella Valley is overseen by the South Coast Air Quality Management District (“District”).

Effective June 15, 2004, we classified the Coachella Valley as “Serious” nonattainment for the 1997 ozone NAAQS.¹ Our classification of Coachella Valley as a Serious ozone nonattainment area established a requirement that the area attain the 1997 ozone NAAQS as expeditiously as practicable, but no later than eight years from designation, i.e., June 15, 2012. On November 28, 2007, the California Air Resources Board (CARB) voluntarily requested that the EPA reclassify the Coachella Valley from Serious to Severe-15. The EPA granted the voluntary reclassification, effective June 4, 2010, establishing a new Severe-15 attainment date of not later than June 15, 2019.² On June 11, 2019, CARB submitted a request that the EPA reclassify the Coachella Valley from Severe-15 to Extreme for the 1997 ozone NAAQS. The EPA granted CARB’s request for reclassification in a separate action, effective July 10, 2019.³ As explained in the notice for that action, the EPA’s reclassification to Extreme nonattainment applies only to the portions of the Coachella Valley subject to the State’s jurisdiction, and the EPA did not reclassify any areas of Indian country within the boundaries of the nonattainment area.⁴

The EPA’s reclassification notice recognized a recent decision of the United States Court of Appeals for the District of Columbia Circuit, *South Coast Air Quality Management District v.*

¹ 69 FR 23858 (April 30, 2004).

² 75 FR 24409 (May 5, 2010). Under CAA section 181(b)(3), the EPA must approve a state’s request for voluntary reclassification to a higher ozone nonattainment classification.

³ 84 FR 32841 (July 10, 2019).

⁴ Id.

EPA, 882 F.3d 1138 (D.C. Cir. 2018) (“*South Coast II*”), as it relates to the EPA’s obligations for a revoked NAAQS. As described in that notice, the EPA revoked the 1997 ozone NAAQS in 2015, and the Court in *South Coast II* held that the EPA’s obligation to reclassify areas failing to meet an attainment date is an anti-backsliding control applicable to the revoked 1997 NAAQS. The notice stated that although the Court did not address voluntary reclassifications requested by states, such reclassifications are consistent with the general scheme for implementing CAA emissions controls to achieve attainment and serve to clarify an area’s anti-backsliding obligations with respect to the revoked 1997 NAAQS.⁵ This proposal clarifies the anti-backsliding obligations for the Coachella Valley by establishing a schedule for the State to submit the plan elements for an Extreme area.

II. Proposed Action and Public Comment

In this action, we are proposing to require the State to submit SIP revisions to address the requirements resulting from the EPA’s reclassification of the Coachella Valley to Extreme nonattainment for the 1997 ozone NAAQS by no later than July 10, 2020, one year from the effective date of the reclassification. The State’s submittal must include an Extreme area plan that addresses the requirements of CAA section 182(e) as well as revisions to the NSR and title V rules applicable to the area. In this proposed action, we are also clarifying one aspect of our July 10, 2019 rule related to Indian country of the Santa Rosa Band of Cahuilla Indians.

A. Extreme Area Plan Requirements

⁵ *Id.*

Under CAA section 182(e), an attainment plan for an Extreme area must include the elements required for a Severe area as well as additional plan elements for an Extreme area.⁶ Where applicable, the plan elements should reflect the reduction of the major source threshold under 182(e) from 25 tons per year for a Severe area to 10 tons per year for an Extreme area. The requirements for an Extreme area plan include, but are not limited to: (1) an attainment demonstration; (2) a reasonable further progress (RFP) demonstration showing ozone precursor reductions of at least 3 percent per year until the attainment date;⁷ (3) additional reasonably available control technology (RACT) rules to address sources subject to the lower Extreme area major source threshold; (4) use of clean fuels or advanced control technology for boilers as described at CAA section 182(e)(3); and (5) contingency measures.

For the Coachella Valley, the District and State will need to submit a plan that includes all elements required under CAA section 182(e), and that demonstrates attainment of the 1997 ozone NAAQS as expeditiously as practicable but no later than June 15, 2024. The plan should identify adopted measures sufficient to make the required RFP and attainment demonstrations for the area.⁸

⁶ CAA section 182(e) specifically excludes certain Severe area requirements from the Extreme area requirements, e.g., CAA section 182(c)(6), (7), and (8).

⁷ CAA section 182(e) does not allow the state to use the provision at CAA section 182(c)(2)(B)(ii) that allows RFP reductions of less than 3 percent per year based on additional demonstrations.

⁸ CAA section 182(e)(5) allows the EPA to approve an Extreme area attainment demonstration based on anticipated development of new control techniques or improvement of existing control technologies. This option requires a state to demonstrate that provisions based on these new techniques or improvements are not necessary to meet emission reductions required within the first 10 years after an area's designation as Extreme, and to submit, at least three years before implementation of the proposed provisions relying on new technology, contingency measures to be implemented in case the anticipated technologies do not achieve the planned reductions. Based on the shorter timeline to attainment (roughly 5 years from reclassification), use of CAA section 182(e)(5) is not appropriate in this instance.

For areas initially designated Extreme, the CAA provides 4 years from the date of designation to submit the required SIP elements to the EPA. The statutory deadline for SIP submissions for areas initially designated as Extreme for the 1997 ozone NAAQS passed in June 2008. Under its general CAA section 301(a) authority, the EPA is establishing a new deadline of July 10, 2020, i.e., 12 months from the effective date of reclassification, for the State to submit SIP revisions addressing the Extreme area requirements for the Coachella Valley. This timeframe is consistent with how the EPA has handled establishing SIP submission deadlines under CAA section 182(i) for ozone areas reclassified by operation of law under CAA section 181(b)(2).⁹ The EPA has also considered that for pollutants other than ozone, the Clean Air Act provides twelve months for states to submit revised attainment demonstration SIP submissions when an area fails to attain by its attainment date.¹⁰ This timeframe generally allows for the time necessary for states and local air districts to finish reviews of available control measures, adopt revisions to necessary attainment strategies, address other SIP requirements and complete the public notice process necessary to adopt and submit timely SIP revisions.

The RACT controls for an area classified as Extreme for the 1997 ozone NAAQS should be implemented before the ozone season of the classification's attainment year, i.e., the ozone season immediately preceding the maximum attainment date. For the Coachella Valley, which has a year-round ozone season and a June 15, 2024 Extreme area attainment date, RACT controls must be implemented by January 1, 2023.

⁹ See, e.g., 75 FR 79302 (Dec. 20, 2010) (Dallas-Ft. Worth, Texas, reclassification to Serious for the 1997 8-hour ozone NAAQS); 69 FR 16483 (March 30, 2004) (Beaumont-Port Arthur, Texas, reclassification to Serious for the 1979 1-hour ozone NAAQS); 68 FR 4836 (Jan. 30, 2003) (St. Louis, Missouri, reclassification to Serious for the 1979 1-hour ozone NAAQS).

¹⁰ See CAA section 179(d)(1) (providing 12 months for a state to submit a new attainment demonstration after a determination that the area failed to attain by its attainment date).

B. NSR and Title V Program Revisions

In addition to the required plan revisions discussed in section II.A of this notice, the State must submit, by July 10, 2020, revised District NSR rules for the Coachella Valley that reflect the Extreme area definitions for new major sources and modifications, and to increase the offset ratios for these sources and modifications consistent with CAA section 182(e)(1) and (2). Under CAA section 182(e)(1), the volatile organic compound and oxides of nitrogen offset ratios for major sources and modifications in an Extreme nonattainment area must be at least 1.5 to 1, or at least 1.2 to 1 if the plan requires all existing major sources in the nonattainment area to use best available control technology. Under CAA section 182(e)(2), any change at a major stationary source that results in an increase in emissions from any discrete operation, unit, or other pollutant emitting activity at the source is generally considered a modification, subject to additional provisions for emissions increases offset through internal reductions and for equipment that is installed to comply with CAA requirements. The District must also make any changes in its title V operating permits program for the Coachella Valley necessary to reflect the change in the major source threshold from 25 tons per year for Severe areas to 10 tons per year for Extreme areas. The rationale for the EPA's deadline of July 10, 2020 is discussed in Section II.A.

C. Clarification of Indian Country in the Coachella Valley Reclassification

Our July 10, 2019 rule approving the State's request to reclassify the Coachella Valley to Extreme for the 1997 ozone NAAQS applied only to areas under state jurisdiction and did not change the nonattainment classification for any areas subject to tribal jurisdiction. Our rule identified tribes located within the Coachella Valley and indicated that Indian country under the jurisdiction of these tribes would remain classified as Severe-15, including land under the

jurisdiction of the Santa Rosa Band of Cahuilla Indians. However, the rule did not mention that the reservation lands of the Santa Rosa Band of Cahuilla Indians includes lands located in both the Coachella Valley and the South Coast ozone nonattainment (“South Coast”) areas. The portion of the Santa Rosa Reservation located in the South Coast is classified as Extreme nonattainment.¹¹ In this proposal, we reiterate that our reclassification did not change the nonattainment classification of any areas of Indian country and clarify that references to Indian country of the Santa Rosa Band of Cahuilla Indians in our reclassification rule apply only to the portions of the Santa Rosa Reservation located within the Coachella Valley. The portion of the reservation lands of the Santa Rosa Band of Cahuilla Indians located within the South Coast nonattainment area remains classified as Extreme for the 1997 ozone NAAQS. The portion of the reservation lands of the Santa Rosa Band of Cahuilla Indians located within the Coachella Valley nonattainment area remains classified as Serious for the 1997 ozone NAAQS.

We will accept comments from the public on this proposal until **[Insert date 30 days after the date of publication in the *Federal Register*]**.

IV. Statutory and Executive Order Reviews

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this proposed action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. Because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classification, the timing of the submittal of the Extreme area requirements does not impose a materially adverse impact under Executive

¹¹ See 75 FR 24409, 24416 (May 5, 2010).

Order 12866. For these reasons, this proposed action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). Furthermore, this action is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under Executive Order 12866.

In addition, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This proposed action does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), because the EPA is seeking comment solely on the timing of submittal requirements.

Executive Order 13175 (65 FR 67249, November 9, 2000) requires the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.” The reclassification does not apply to tribal areas, and the proposed rule would not impose a burden on Indian reservation lands or other areas where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction within the Coachella Valley, and thus, this proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175.

This proposed action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This proposed action does not alter the relationship, or the distribution of power and responsibilities established in the Clean Air Act.

This proposed rule also is not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because the EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation.

As this proposal would set a deadline for the submittal of CAA required plans and information, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs policies, and activities on minority populations and low-income populations in the United States. The EPA believes that this action, which addresses the

timing for the submittal of Extreme area ozone planning requirements, does not have disproportionately high and adverse human health or environmental health effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898.

List of Subjects in 40 CFR Part 52

Environmental protection, Incorporation by reference, Ozone.

Dated: August 14, 2019.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

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